Supreme Court, U. S.
FILED
SEP 30 1974
MICHAEL RODAK, JR., CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term 1974
No_____

ALTON JAMES HENDERSON	)	In Forma Pauperis
	)	
v.	)	From North Carolina
	)	
STATE OF NORTH CAROLINA	)	State Court Decision

REPLY BRIEF -- PETITION FOR CERTIORARI

Pursuant to Rule 24 Petitioner herewith files his Reply Brief:

Argument Replied to: That Petitioner's Question No. 7 is not a federal question because the severability of the statute is a matter of local law. (Respondents Brief p. 18)

Before the question of severability is reached there is first the question of which twin has to die -- the death requirement or the jury discretion requirement:

> "...while the resolution of the question of severability, which followed the announcement that the proviso was invalid, certainly should have been guided by manifestations of legislative intent, the determination of which part of the statute was invalid was a question, not of legislative intent, but rather of the application of FURMAN." (52 N.C.L. Rev. 875 at 881) (italics added).

Before FURMAN was decided three propositions were possible: (1) that the death sentence requirement was invalid, (2) that the jury discretion requirement was invalid, or (3) that neither was invalid alone but that the two cannot stand together and the Constitution is indifferent as to which must fall.

After FURMAN was decided the North Carolina Court held that proposition #2 was established, and that the discretionary proviso was the sole casualty. Whether that interpretation is correct is a federal question.

Respectfully submitted this 26 day of September 1974.

W. R. Dalton, Jr.
Attorney for Petitioner